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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

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March 27, 2012

The Honorable Jackalyn Pfannenstiel
Assistant Secretary of the Navy for Energy,
Installations, and Environment
2000 Navy Pentagon
Washington, D.C. 20350-2000

Dear Madam Secretary:

I am writing to you to raise questions about your response to the findings presented in Naval Audit Service Report N2011-0060, dated September 22, 2011.¹

The subject of this audit is a \$90 million contract awarded for photovoltaic projects in Florida, Mississippi, Texas, and Virginia using money appropriated by the American Recovery and Reinvestment Act of 2009.

Based on a careful review of all relevant facts, the audit concluded that these projects were a waste of money and recommended that they be canceled.

First, the audit determined that these projects “were not cost effective and did not represent a prudent use of the Recovery Act funds.” With an average payback of 124 years -- ranging from a low of 70 all the way up to 324 years -- and a savings-to-investment ratio in the 0.04 - 0.20 range, these projects were not even close to meeting energy efficiency standards established in law and regulation.² And because the photovoltaic panels have an expected useful life of 25 years, the report states, “recovery of investment is impossible The panels will never pay for themselves.”³

Second, the audit found that the contracting mechanism employed to solicit proposals “did not foster competition, did not protect the Navy’s interests, and was not appropriate for awarding photovoltaic projects.”⁴

¹ This report is an offshoot of related audit reports issued by the DOD OIG, including 2011-045 and -106;

² DOD OIG Audit Report 2011-106, p. 6; 2011-045, pp. 2, 7, and 8; NAS Audit Report N2011-0060, pp.4 and 9;

³ NAS Audit Report N2011-0060, pp. 13,18;

⁴ NAS Audit Report, p. 13;

Third, the Navy “expeditiously awarded” the contractor most of the \$90 million “before the scope of the task orders was defined.”⁵ The firm-fixed-prices of the photovoltaic systems “were established during sole source negotiations with the selected contractor.”⁶ Furthermore, the audit states that “the contractor was in control of recommending what photovoltaic projects would be constructed and where they would be constructed.”⁷

Fourth, although the contract was “quickly awarded on June 29, 2009,” as of the date of the report – September 22, 2011, “work had not started.”⁸ In other words, the projects were over two years behind schedule, and only \$6 million had been infused into the economy, and the contractor reported zero jobs created. If the purpose of this program was to help “jump start the economy,” it was a dismal failure.

This particular report and the other related ones produced by the Inspector General’s (IG) Audit Office clearly indicate that energy-efficiency projects, which were funded under the Obama-Pelosi-Reid Stimulus program, were a license to waste the taxpayers’ money. A big part of that problem, according to the IG, was a misunderstanding regarding energy efficiency requirements: The IG stated that senior Navy “**officials selected projects that were not justified because they incorrectly determined that Recovery Act energy projects did not have to be cost-effective.**”⁹

Madam Secretary, the recommendations in this audit report were directed to you, and you “non-concurred” with those proposals. In giving your reasons for rejecting the audit’s recommendations, you appear to arbitrarily set aside established standards for measuring the cost effectiveness of energy efficiency programs -- standards which are grounded in law and regulation. These standards are known as the savings-to-investment ratio and simple payback period. These projects, costing the taxpayers \$90 million, missed those marks by a wide margin. They were not even close. In rejecting those recommendations, you relinquished your responsibility to uphold those standards in favor of “the Secretary of the Navy’s goals on energy security and independence.” Madam Secretary, you need to help me understand your decision-making process on this issue.

By the government’s own standards that carry the force of law, these \$90 million photovoltaic projects were not cost effective. In fact, they were a gross waste of the taxpayers’ money. As a senior government official nominated by the President and confirmed by the Senate, you have a sacred responsibility to abide by the law of the land and be a prudent and thrifty manager of taxpayer money. For reasons I do not yet understand, you appear to have willingly abandoned those responsibilities to further the energy “goals” advocated by the Secretary of the Navy.

⁵ NAS Audit Report, pp. 13-14;

⁶ NAS Audit Report, p. 14;

⁷ NAS Audit Report, p. 11;

⁸ NAS Audit Report, p. 18;

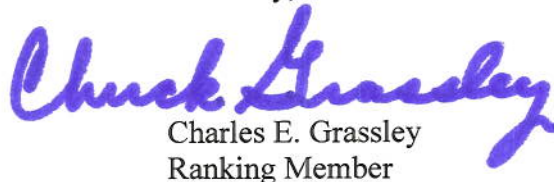
⁹ DOD OIG Audit Report 2011-106, p. 6;

In order to help me understand why you rejected the audit's recommendations, I respectfully request that you answer the following questions:

- Do federal law, regulation, and policy require that renewable energy projects, which were examined in the audits referenced in this letter, meet certain cost-effectiveness standards? Please provide a detailed explanation, including relevant standards and citations, in your response.
- In reply to questions I first raised about this matter on November 30, 2011, the Department of the Navy response, which you presumably reviewed and approved, appears to imply that these projects did not need to meet cost-effectiveness standards. It contained the following flat-out assertion: "**There is no absolute requirement on Federal agencies that renewable energy projects be cost-effective in order to be executed.**"¹⁰ Did you concur with that statement? If so, please cite the law and regulation that exempt these projects from standing cost-effectiveness standards?
- If there is no section of law or regulation that exempts such projects from cost-effectiveness standards, then what was the foundation for your decision to reject the audit's recommendations? Please provide a detailed legal analysis supporting any response.
- Do you believe that the Secretary's energy "goals" are consistent with the laws and regulations governing cost effectiveness of such projects? If so, specify the savings-to-investment ratio and payback period on which that assessment is based?
- Do you plan to reevaluate your decision to reject the recommendations in Navy Audit Report N2011-0060? If not, why not?

I respectfully request a response to my questions by April 6, 2012. Your cooperation in this matter would be appreciated.

Sincerely,


Charles E. Grassley
Ranking Member

Copy to:
Secretary of Defense Panetta and
Acting IG Halbrooks

¹⁰ Email report from Navy OLA on OIG Audit Report 2011-106, 1/17/12;